

110TH CONGRESS
2D SESSION

H. R. 6248

To amend the Truth in Lending Act to prohibit unfair practices in electronic payment system networks, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2008

Mr. WELCH of Vermont (for himself, Mr. ELLISON, and Mr. BRALEY of Iowa) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act to prohibit unfair practices in electronic payment system networks, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Credit Card Inter-
5 change Fees Act of 2008”.

1 **SEC. 2. PROHIBITION ON CERTAIN UNFAIR CREDIT AND**
 2 **FUND TRANSFER PRACTICES.**

3 (a) IN GENERAL.—The Truth in Lending Act (15
 4 U.S.C. 1601 et seq.) is amended by adding at the end
 5 the following new chapter:

6 **“CHAPTER 6—PROHIBITION ON UNFAIR**
 7 **PRACTICES IN ELECTRONIC PAYMENT**
 8 **SYSTEM NETWORKS**

“Sec. 191. Definitions.

“Sec. 192. Additional charges on merchants and consumers for premium pay-
 ment cards prohibited.

“Sec. 193. Certain creditor or credit card network-imposed restrictions on mer-
 chants prohibited.

“Sec. 194. Fair and transparent transactions.

“Sec. 195. Enforcement.

9 **“SEC. 191. DEFINITIONS.**

10 “For purposes of this title, the following definitions
 11 shall apply:

12 “(1) CHARGE CARD.—The term charge card
 13 has the same meaning as in section 127(c)(4)(E).

14 “(2) DEBIT CARD.—The term ‘debit card’
 15 means any card or other device issued by a financial
 16 institution (as defined in section 903(8)) to a con-
 17 sumer for use in initiating electronic fund transfers
 18 (as defined in section 903(6)) from the account of
 19 the consumer at such financial institution for the
 20 purpose of transferring money between accounts or
 21 obtaining money, property, labor, or services.

1 “(3) ELECTRONIC PAYMENT SYSTEM NET-
2 WORK.—The term ‘electronic payment system net-
3 work’ means a network that provides, through li-
4 censed members, processors, or agents—

5 “(A) for the issuance of payment cards (by
6 credit card issuers in the case of a credit card,
7 charge card issuers in the case of a charge
8 card, or financial institutions (as defined in sec-
9 tion 903(8)) in the case of debit cards) bearing
10 any logo of the network;

11 “(B) the proprietary services and infra-
12 structure that route information and data to fa-
13 cilitate transaction authorization, clearance, and
14 settlement that merchants must access in order
15 to accept payment cards bearing any logo of the
16 network as payment for goods and services; and

17 “(C) for the screening and acceptance of
18 merchants into the network in order to allow
19 such merchants to accept payment cards bear-
20 ing any logo of the network as payment for
21 goods and services.

22 “(4) LICENSED MEMBER.—The term ‘licenced
23 member’, in connection with any electronic payment
24 system network, includes—

1 “(A) any creditor or charge card issuer
2 that is authorized to issue credit cards or
3 charge cards bearing any logo of the network;

4 “(B) any financial institution (as defined
5 in section 903(8)) that is authorized to issue
6 debit cards to consumers who maintain ac-
7 counts at such institution; and

8 “(C) any person, including any financial
9 institution, on occasion referred to as an
10 ‘acquirer’ that is authorized—

11 “(i) to screen and accept merchants
12 into any program under which any pay-
13 ment card bearing any logo of such net-
14 work may be accepted by the merchant for
15 payment for goods or services;

16 “(ii) to process transactions on behalf
17 of any such merchant for payment; and

18 “(iii) to complete financial settlement
19 of any such transaction on behalf of such
20 merchant.

21 “(5) MERCHANT.—The term ‘merchant’ means
22 any person in the business of selling or providing
23 any good or service for consideration.

1 “(6) PAYMENT CARD.—The term ‘payment
2 card’ means a credit card , a charge card, or a debit
3 card.

4 **“SEC. 192. ADDITIONAL CHARGES ON MERCHANTS AND**
5 **CONSUMERS FOR PREMIUM PAYMENT CARDS**
6 **PROHIBITED.**

7 “(a) IN GENERAL.—An electronic payment system
8 network may not, directly or through any agent, processor,
9 or licensed member of the network, require or permit any
10 merchant to pay any interchange, processing, or other fee
11 in connection with any payment card transaction initiated
12 through a premium payment card in any amount in excess
13 of the amount of any such interchange, processing, or
14 other fee that would be imposed in connection with such
15 payment card transactions if initiated through a nonpre-
16 mium payment card.

17 “(b) PREMIUM DEFINITION.—For purposes of sub-
18 section (a), the following definitions shall apply:

19 “(1) PREMIUM PAYMENT CARD.—The term
20 ‘premium payment card’ means a payment card that
21 provides rewards or other cardholder benefits or
22 services for the use of the card other than those ben-
23 efits offered to any customer within the electronic
24 payment system network.

1 “(2) NONPREMIUM PAYMENT CARD.—The term
 2 ‘nonpremium payment card’ means a payment card
 3 bearing any logo of an electronic payment system
 4 network that is not a premium payment card.

5 **“SEC. 193. CERTAIN CREDITOR OR CREDIT CARD NET-**
 6 **WORK-IMPOSED RESTRICTIONS ON MER-**
 7 **CHANTS PROHIBITED.**

8 “(a) PRICING DISPLAY RESTRICTIONS.—With re-
 9 spect to any credit card which may be used for extensions
 10 of credit through an electronic payment system network
 11 in connection with sales transactions in which the mer-
 12 chant is a person other than the card issuer, the electronic
 13 payment system network may not, directly or through any
 14 agent, processor, or licensed member of the network, by
 15 contract, or otherwise, restrict the merchant’s discretion
 16 as to how to display or advertise the merchant’s prices.

17 “(b) HONOR ALL CARDS RULE.—An electronic pay-
 18 ment system network may not, directly or through any
 19 agent, processor, or licensed member of the network, pro-
 20 hibit any merchant that otherwise accepts payment cards
 21 bearing any logo of the network from refusing to accept
 22 any particular type of card due to its cost, except that
 23 the seller may be prohibited from refusing to accept a pay-
 24 ment card issued by a particular creditor or financial insti-
 25 tution without respect to any cost differences.

1 “(c) STEERING CONSUMERS.—An electronic payment
2 system network may not, directly or through any agent,
3 processor, or licensed member of the network, by contract,
4 or otherwise, inhibit the ability of any merchant to direct
5 consumers to the merchant’s preferred form of payment.

6 “(d) SINGLE ENTITY RULE.—An electronic payment
7 system network may not, directly or through any agent,
8 processor, or licensed member of the network, by contract,
9 or otherwise, require any merchant to accept payment
10 cards at 1 or more business locations in order to be able
11 to accept payment cards at another business location.

12 “(e) CHARGEBACKS FOR TRANSACTIONS ON CERTAIN
13 POS TERMINALS THAT EXCEED THE ALLOWABLE
14 AMOUNT ON SUCH DEVICES.—An electronic payment sys-
15 tem network may not, directly or through any agent, proc-
16 essor, or licensed member of the network, by contract, or
17 otherwise, allow or require a chargeback to any merchant
18 for any payment involving any payment and transfer initi-
19 ated by the consumer at a point-of-sale terminal operated
20 by the merchant on the basis that the amount of the trans-
21 action exceeded any preauthorized or predetermined
22 amount for such terminal.

23 “(f) MERCHANTS PERMITTED TO ESTABLISH MIN-
24 IMUM OR MAXIMUM AMOUNTS FOR PAYMENT BY PAY-
25 MENT CARDS.—An electronic payment system network

1 may not, directly or through any agent, processor, or li-
2 censed member of the network, by contract, or otherwise,
3 prohibit any merchant from setting any maximum amount
4 or minimum amount for the use of a payment card bearing
5 any logo of such network by a consumer to pay for a trans-
6 action with such merchant.

7 “(g) RESTRICTIONS ON NETWORK ROUTING PROHIB-
8 ITED.—An electronic payment system network may not,
9 directly or through any agent, processor, or licensed mem-
10 ber of the network, by contract, or otherwise, prohibit any
11 merchant from directing the routing of payment card
12 transactions for processing in the way chosen by the mer-
13 chant.

14 “(h) FEES FOR FAILING TO PROVIDE A PARTICULAR
15 NUMBER OF TRANSACTIONS PROHIBITED.—An electronic
16 payment system network may not, directly or through any
17 agent, processor, or licensed member of the network, by
18 contract, or otherwise, impose any fee on any merchant
19 for the failure of the merchant to meet any minimum
20 number of transactions in which the consumers pay for
21 such transactions using a payment card bearing any logo
22 of such network.

23 **“SEC. 194. FAIR AND TRANSPARENT TRANSACTIONS.**

24 “(a) DISCLOSURE OF CONTRACT TERMS.—An elec-
25 tronic payment system network, and any agent, processor,

1 or licensed member of the network, may not establish or
2 maintain, directly or indirectly by contract or through a
3 licensing arrangement, any agreement with a merchant,
4 unless the network, agent, processor, or licensed member
5 has made available to the merchant all of the rules, terms,
6 and conditions to which such merchant will be bound
7 under such agreement, including the complete operating
8 rules of the relevant payment system using payment cards
9 bearing any logo of such network, without restrictions on
10 the merchant's use of any such information.

11 “(b) REVIEW OF RULES, TERMS, AND AGREE-
12 MENTS.—The Federal Trade Commission shall—

13 “(1) prescribe regulations to—

14 “(A) ensure that all of the rules, terms,
15 and conditions to which a merchant or con-
16 sumer is subject under an agreement with an
17 electronic payment system network, or any
18 agent, processor, or licensed member of the net-
19 work, directly or indirectly, by contract or
20 through a licensing arrangement, are not unfair
21 or deceptive to consumers and merchants and
22 are not anticompetitive; and

23 “(B) prohibit any unfair or deceptive act
24 or practice or anticompetitive act or practice
25 that may otherwise be permitted under or result

1 from any rule, term, or condition described in
2 subparagraph (A); and

3 “(2) regularly review all of the rules, terms, and
4 conditions described in paragraph (1)(A) established
5 by each electronic payment system network, or any
6 agent, processor, or licensed member of the network.

7 “(c) INTERCHANGE AND OTHER FEES.—

8 “(1) COLLECTION AND DISSEMINATION OF IN-
9 FORMATION.—The Board shall collect, publish, and
10 disseminate to the public—

11 “(A) complete information on the inter-
12 change, processing and other fees charged by
13 each electronic payment system network, or any
14 agent, processor, or licensed member of the net-
15 work, in connection with any aspect of trans-
16 actions initiated by consumers using payment
17 cards bearing any logo of such network, includ-
18 ing fees imposed by the payment card issuer in
19 connection with any such transaction; and

20 “(B) all of the rules, terms, and conditions
21 to which a merchant or a consumer is subject
22 under an agreement with an electronic payment
23 system network, or any agent, processor, or li-
24 censed member of the network, directly or indi-
25 rectly by contract or through a licensing ar-

1 rangement for transactions indicated by con-
2 sumers using payment cards bearing any logo
3 of such network.

4 “(2) REGULATIONS.—For purposes of this sub-
5 section, the Board may prescribe regulations and
6 issue orders requiring any electronic payment system
7 network, and any agent, processor, or licensed mem-
8 ber of any such network, to submit any information,
9 including rules, agreements, and contracts, that the
10 Board determines to be necessary or appropriate for
11 the Board to meet the requirements of paragraph
12 (1).

13 **“SEC. 195. ENFORCEMENT.**

14 “Subsections (a), (b), and (h) of section 130 shall be
15 applied for purposes of this chapter by substituting the
16 term ‘an electronic payment system network, or any agent,
17 processor, or licensed member of any such network’ for
18 ‘creditor’ each place such term appears in such sub-
19 sections.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

21 (1) Section 127(a) of the Truth in Lending Act
22 (U.S.C. 1637(a)) is amended by inserting after
23 paragraph (8) the following new paragraph:

24 “(9) In the case of any account under which a
25 credit card issued in connection with the account

1 bears the logo of any electronic payment system net-
2 work, the amounts of any fees charged by the net-
3 work, or any agent, processor, or licensed member of
4 the network, in connection with any aspect of trans-
5 actions initiated by the consumers using such credit
6 card, including any interchange, processing, or other
7 fees.”.

8 (2) Section 127(b) of the Truth in Lending Act
9 (U.S.C. 1637(b)) is amended by adding at the end
10 the following new paragraph:

11 “(13) In the case of any account under which
12 a credit card issued in connection with the account
13 bears the logo of any electronic payment system net-
14 work, if any fee was charged by the network, or any
15 agent, processor, or licensed member of the network,
16 in connection with any aspect of a transaction which
17 resulted in an extension of credit reported on such
18 statement, the amount of such fee, including any
19 interchange, processing, or other fee.”.

20 (3) Section 127(c)(1)(A) of the Truth in Lend-
21 ing Act (U.S.C. 1637(c)(1)(A)) is amended by add-
22 ing at the end the following new clause:

23 “(v) INTERCHANGE AND OTHER
24 FEES.—In the case of an application or so-
25 licitation to open an account under which

1 a credit card issued in connection with the
2 account would bear the logo of any elec-
3 tronic payment system network, the
4 amounts of any fees charged by the net-
5 work, or any agent, processor, or licensed
6 member of the network, in connection with
7 any aspect of any transaction initiated by
8 the consumer using such credit card, in-
9 cluding any interchange, processing, or
10 other fees.”.

11 (4) Section 127(c)(4)(A) of the Truth in Lend-
12 ing Act (U.S.C. 1637(c)(4)(A)) is amended by add-
13 ing at the end the following new clause:

14 “(iv) In the case of an application or
15 solicitation to open an account under
16 which a charge card issued in connection
17 with the account would bear the logo of
18 any electronic payment system network,
19 the amounts of any fees charged by the
20 network, or any agent, processor, or li-
21 censed member of the network, in connec-
22 tion with any aspect of transactions initi-
23 ated by the consumer using such charge
24 card, including any interchange, proc-
25 essing, or other fees.”.

1 (5) Section 130(a) of the Truth in Lending Act
2 (U.S.C. 1640(a)) is amended by striking “chapter 4
3 or 5” and inserting “chapter 4, 5, or 6”.

4 (6) Section 130(b) of the Truth in Lending Act
5 (U.S.C. 1640(b)) is amended by inserting “or 6”
6 after “chapter 5”.

7 (7) Section 130(g) of the Truth in Lending Act
8 (U.S.C. 1640(g)) is amended by striking “chapter 4
9 or 5” and inserting “chapter 4, 5, or 6”.

10 (8) Section 906(c) of the Electronic Fund
11 Transfer Act (U.S.C. 1693d(c)) is amended—

12 (A) in paragraph (3), by striking “and”
13 after the semicolon at the end;

14 (B) in paragraph (4), by striking the pe-
15 riod at the end and inserting “; and”; and

16 (C) by adding at the end the following new
17 paragraph:

18 “(5) in the case of an account under which an
19 electronic fund transfer may be initiated by the con-
20 sumer by means of any card or other device issued
21 by the financial institution which bears the logo of
22 any electronic payment system network, if any fee
23 was charged by the network, or any agent, proc-
24 essor, or licensed member of the network, in connec-
25 tion with any aspect of a transaction which resulted

1 in an electronic fund transfer reported on such
 2 statement, the amount of such fee, including any
 3 interchange, processing, or other fee.”.

4 (c) CLERICAL AMENDMENT.—The table of chapters
 5 for the Truth in Lending Act is amended by inserting
 6 after the item relating to chapter 5 the following new item:

“6. PROHIBITION ON UNFAIR PRACTICES IN ELECTRONIC PAYMENT SYSTEM
 NETWORKS.....191”.

